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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,726	03/29/2001	Terence Martin	21459/90913	5474
23644	7590	11/04/2003	EXAMINER	
BARNES & THORNBURG P.O. BOX 2786 CHICAGO, IL 60690-2786			SULLIVAN, DANIEL M	
			ART UNIT	PAPER NUMBER
			1636	

DATE MAILED: 11/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/821,726

Applicant(s)

MARTIN ET AL.

Examiner

Daniel M Sullivan

Art Unit

1636

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 7-11.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-6, 13-15, 22 and 27-29.

Claim(s) withdrawn from consideration: 12, 16-21 and 23-26.

8. ☒ The proposed drawing correction filed on 21 September 2003 is a) ☒ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).

10. ☐ Other: \_\_\_\_\_

DAVID GUSO  
PRIMARY EXAMINER

Continuation of 2. NOTE: Claims 1 and 2 have been amended such that the claims are now directed to proteins "obtainable from" as opposed to "produced by" gastric epithelial cells, which expands the scope of the claims such that a new search and examination would be required. Likewise, the amendment of claims 13 and 14 such that they are now generally directed to "a pharmaceutical composition" as opposed to a composition used for the treatment of ulcers or overgrowth of gastric epithelia expands the scope of the claim requiring additional search and examination. Furthermore, claims 1, 2, 4 and 5 have been amended such that the claims now recite "consisting essentially of" rather than "comprising" which raises new issues under 35 U.S.C. §112, second paragraph, because it is unclear how the scope of the claimed subject matter has been altered. .

Continuation of 5. does NOT place the application in condition for allowance because: In the "Remarks" accompanying the amendment, Applicant requests that claims 7-11 be passed to issue regardless of whether other pending claims are found to be allowed. Applicant is reminded that an application cannot be passed to issue until all pending claims are in condition for allowance.

The arguments set forth regarding allowability of the claims are predicated on entry of the amendments thereto. As the amendments have not been entered, these arguments are moot. It is noted, however, that amending the claims to recite "consisting essentially of" instead of "comprising" would not overcome the outstanding rejections because, with regard to nucleic acid sequences, the Office interprets the phrase as open unless it is explicitly defined in the specification..